

OCT 27 2004



INDIANA UTILITY REGULATORY COMMISSION
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INDIANAPOLIS, INDIANA 46204-2764

INDIANA UTILITY

REGULATORY COMMISSION
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IN RE: THE MATTER OF A COMMISSION)
INVESTIGATION ON ITS OWN MOTION)
REGARDING OPERATION OF UTILITY)
CENTER, INC.'S WATER AND SEWAGE)
TREATMENT FACILITIES IN ALLEN COUNTY,)
INDIANA.)

CAUSE NO. 41187

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission" or "IURC") has caused the following entry to be made:

Pursuant to a Docket Entry issued in this Cause on September 24, 2004, an Attorneys' Conference was convened in this Cause on October 21, 2004 at 10:30 a.m. in the Commission Law Library. At that Attorneys' Conference, Respondent Utility Center, Inc., appeared by counsel, Christopher J. Weber. William L.G. Etzler, Regional Manager of Aqua Indiana, Inc., was also present. The City of Fort Wayne appeared by counsel, Randolph L. Seger and Christopher M. York. Thomas T. Nitza, Jr., Program Manager for the City of Fort Wayne, was also present. The OUCC appeared, by counsel, Richard Corey. IURC Testimonial Staff, Jerry Webb, was present with counsel Kristina Kern Wheeler. Also present on behalf of IURC Advisory Staff was Moshrek Sobhy.

The parties, which have been acting pursuant to a Settlement Agreement approved by the Commission on December 1, 1999¹, updated the Presiding Officers on the status of several filings made in 2003: *Motion for Commission Determination Regarding Interconnection and Water Purchase Agreement Between the City of Fort Wayne and Utility Center, Inc.* filed by the City of Fort Wayne ("City") on August 6, 2003, and *Response of Utility Center, Inc. to the City of Fort Wayne's Motion for Commission Determination Regarding Interconnection and Water Purchase Agreement Between the City of Fort Wayne and Utility Center, Inc.* filed on August 15, 2003, by Utility Center, Inc. ("Utility").

Counsel for the City advised the Presiding Officers that it believes the physical interconnection between the City and the Utility is still in effect, and that while the contract for the sale of water has expired, the Commission has not yet ordered an end to the physical disconnection and reporting required of the Utility. The physical interconnection occurred pursuant to an *Interconnection and Water Purchase Agreement* executed by the City and the Utility on July 15, 1998, amended on or about November 25, 1998, and approved by the Commission as part of the Settlement Agreement². As a

¹ See IURC Interim Order, Cause No. 41187, December 1, 1999.

² Id.

result of the Settlement Agreement, the City continues to believe it is obligated to reserve one million gallons of water per day for possible use by the Utility and feels burdened by what it believes is an ongoing responsibility impacting the dynamics of the City's water system. The City thus seeks clarification from the Commission to determine whether or not a daily water reserve is required, whether the physical interconnection between the City and Utility should be removed, and whether monthly reporting by the Utility should continue or be modified. The City further seeks payment of outstanding reserve fees it alleges are owed by the Utility. During the Attorneys' Conference counsel for the City also provided the Presiding Officers with an update on annexation and condemnation proceedings underway by the City.

Counsel for the Utility advised the Presiding Officers of its position that the water purchase contract has in fact expired and that the Utility did not exercise its renewal option. The Utility also indicated it has not needed to purchase water from the City since December of 2002, as a result of recent system expansions and a master plan which has been filed with the Commission. The Utility believes that the ongoing dispute is contractual in nature and submits that the Commission could order removal of the physical interconnection. The Utility also seeks to end or modify its monthly reporting requirement.

Counsel for IURC Testimonial Staff indicated that there has been no evidence placed in the record as to the dispute between the parties and was hesitant to take a position other than to agree that the Utility has met the provisions of the Settlement Agreement and has improved its service. Testimonial Staff seeks some type of formal proceeding to dispose of any remaining issues and to define the scope of what reporting, if any, the Commission may require.

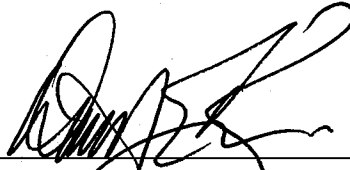
The parties indicated that they are willing to meet in an effort to reach agreement on a number of outstanding issues. Given their willingness to pursue resolution of the issues in this matter via possible modification of the Settlement Agreement, the Presiding Officers find that an additional Attorneys' Conference should be scheduled to allow them to report the progress of their discussions to the Commission. Accordingly, an Attorneys' Conference is hereby scheduled for December 20, 2004, at 11:00 a.m. in the Commission Law Library, Indiana Government Center South, Suite E-306, Indianapolis, Indiana.

Should the parties conclude that modification of the Settlement Agreement is necessary, the parties are directed to file a copy of the modified agreement with the Commission at least five (5) days in advance of the Attorneys' Conference. In the event that the parties have resolved all outstanding issues by agreement, they should be prepared to discuss possible dates for an Evidentiary Hearing to allow the Commission to accept the Settlement Agreement into the record in this proceeding.

In the event the parties are unable to resolve each of the outstanding issues by agreement, at the Attorneys' Conference they should be prepared to advise the Presiding Officers regarding the specific issues that remain unresolved, and should also be prepared

to submit a proposed procedural schedule to the Commission. The proposed procedural schedule should include procedural dates to allow for the filing of supplemental testimony necessary to ensure that the Commission has a full and complete record upon which to make a decision on the unresolved issues, along with a date for an Evidentiary Hearing.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'David E. Ziegner', written over a horizontal line.

David E. Ziegner, Commissioner

A handwritten signature in black ink, appearing to read 'Andrea L. Brandes', written over a horizontal line.

Andrea L. Brandes, Administrative Law Judge

Dated: October 27, 2004